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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER)	
COMPANY'S APPLICATION TO APPROVE)	CASE NO. IPC-E-15-09
FIRST AMENDMENT TO POWER PURCHASE)	
AGREEMENT WITH TELOCASET WIND)	COMMENTS OF THE
POWER PARTNERS, LLC.)	COMMISSION STAFF
)	

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Daphne Huang, Deputy Attorney General, and in response to the Notice of Application and Notice Modified Procedure issued in Order No. 33290 on April 28, 2015, in Case No. IPC-E-15-09, submits the following comments.

BACKGROUND

On April 1, 2015, Idaho Power Company filed an Application asking the Commission to approve the First Amendment to its Power Purchase Agreement (PPA) with Telocaset Wind Power Partners, LLC. The PPA is not a contract under the Public Utility Regulatory Policies Act (PURPA), but includes many provisions similar to those in PURPA contracts. *See* Order No. 30259 at 2.

The proposed Amendment deletes and replaces the PPA's Section 12.1 and Appendix J. The new Section 12.1 changes the nature of financial statements Telocaset must provide,

following administrative changes implemented by Telocaset's new parent organization. Application at 2-3. The amended Appendix J resolves the parties' conflicting interpretations of the PPA's provisions regarding assumption of "curtailment risk." *Id.* at 6.

The Commission approved Idaho Power's PPA with Telocaset in 2007. Order No. 30259. Under the PPA, Idaho Power purchases energy generated by Telocaset's 100.65 megawatt (MW) Elkhorn Wind Park facility, located in eastern Oregon between Baker City and La Grande. Application at 2. The facility is connected directly to Idaho Power's La Grande-Brownlee 230 kilovolt transmission line. *Id.* at 2.

Under PPA Section 9.2 and Appendix J, Idaho Power could – on notice to Telocaset – elect to pay lower prices ("Post-Operation Date Alternative Pricing") for energy deliveries, but in exchange, Idaho Power would accept more financial risk for possible transmission curtailment. *Id.* at 4. In December 2011, Idaho Power gave notice to Telocaset that it would use the Post-Operation Date Alternative Pricing. *Id.* In August 2012, Telocaset sent its first invoice to Idaho Power requesting payment for "Lost Output" related to transmission curtailments from March through July 2012; this was followed by additional monthly invoices for Lost Output. *Id.* at 4-5. On review of its documented curtailments and the applicable provisions of the PPA, Idaho Power disagreed with Telocaset's Lost Output calculations. *Id.* at 5.

On December 31, 2012, Idaho Power paid Telocaset the undisputed Lost Output amount of \$485,985.33 for the period from January 2012 through September 2012. *Id.* at 6. On May 21, 2013, Idaho Power paid Telocaset an additional undisputed Lost Output amount of \$52,544.05, for the period from October 2012 through December 2012. *Id.* The remaining disputed balance is \$145,378.97. *Id.* In essence, the remaining dispute concerned the parties' disagreement about how Appendix J applies to the PPA. *Id.*

Throughout 2013 and 2014, the parties engaged in meetings and discussions about their interpretations of Appendix J. *Id.* at 7. Under Telocaset's interpretation of Appendix J, Idaho Power "assumed curtailment risk for the full 100.65 [megawatt (MW)] nameplate rating of the Facility." *Id.* at 6. Under Idaho Power's interpretation of Appendix J, Idaho Power "only accepted curtailment risk for the 66 MW of the Facility's nameplate rating, as the Facility elected to only secure 66 MW of network transmission capacity for its output" under Section 6.8 of the PPA. *Id.* On December 19, 2014, the parties agreed to and signed the First Amendment for which they now seek the Commission's approval. *Id.* at 7.

As noted in the Application, “as part of the Amendment, each party agreed to settle and release any and all claims arising under or pursuant to Appendix J . . . including, but not limited to, the disputed Lost Output payment claim of \$145,378.97.” *Id.* at 8. The parties also agreed to amend the language in the PPA that led to the parties’ disparate interpretations. To this end, the parties have “mutually resolved and agreed to [language] . . . memorialized in the Amended Appendix J.” *Id.*

The parties also agreed to replace Section 12.1, which requires Telocaset to provide *audited* financial statements to Idaho Power, with a new Section 12.1, that requires Telocaset to provide *unaudited* financial statements. *Id.* at 7. This amendment accommodates administrative changes implemented by Telocaset’s new parent organization. *Id.* at 3. Because Telocaset is already required “to post \$10 million of Performance Assurance” under an existing (and unaltered) provision in the PPA, “Idaho Power believes there is little to no impact by accepting the proposed change in financial reporting requirements.” *Id.* at 3.

STAFF ANALYSIS

Lost Output Payment Dispute and Amended Appendix J

As described in the Application, the primary driver for the First Amendment is the need to resolve disputes between the parties relating to payment for Lost Output as a result of transmission curtailments. The Amendment also replaces Appendix J to clarify going forward the terms associated with Lost Output due to transmission curtailments.

Staff carefully reviewed the original Appendix J and believes that it fails to clearly specify each party’s responsibility for Lost Output due to transmission constraints. Both Idaho Power’s and Telocaset’s interpretations of the original Appendix J could be judged to be reasonable, and Staff believes neither party’s interpretation is more compelling than the other based on the minimal relevant language contained in the Agreement. The original Appendix J leaves considerable room for interpretation; therefore, the disagreement between the parties is legitimate and cannot be resolved simply through reliance on language in the Appendix.

Staff also reviewed the amounts Telocaset alleged were owed by Idaho Power for Lost Output, in addition to the adjustments proposed by Idaho Power relating to invoice errors, maintenance, curtailment associated with maintaining system reliability, and unavailability of non-firm transmission capacity. Staff believes the adjustments proposed by Idaho Power, and accepted by Telocaset, are justified and reasonable. As stated in the Application, the parties previously

agreed to compensation for Lost Output in the amounts of \$485,985 and \$52,544, still leaving \$145,379 as disputed.

As a condition of the proposed Amendment, the parties have agreed to settle and release any and all claims arising under or pursuant to Appendix J on or before the effective date of January 1, 2014, including, but not limited to, the disputed Lost Output payment claim of \$145,379. Had the parties elected to litigate the dispute rather than reach settlement, Staff believes that the best outcome Idaho Power could have achieved would have been to be relieved of paying the \$145,379 disputed Lost Output payment claim. Because the parties have agreed to settle and release all claims, Staff believes Idaho Power is in the same position it would have otherwise been had it prevailed in a litigated case. Consequently, Staff supports the proposed Amendment and believes that the settlement of all claims for Lost Output is fair and reasonable.

Audited vs. Unaudited Financial Statements


As further described in the Application, the parties also agreed to replace Section 12.1 to require Telocaset to provide to Idaho Power unaudited, rather than audited, financial statements. According to Idaho Power, this Amendment accommodates administrative changes implemented by Telocaset's new parent organization. Idaho Power contends that because Telocaset is already required to post \$10 million of Performance Assurance under an existing (and unaltered) provision in the PPA, there will be little to no impact by accepting the proposed change in financial reporting requirements.

Staff agrees with Idaho Power, that what is most important is that Telocaset provide adequate Performance Assurance, not whether its financial statements are audited or not. Consequently, Staff is not opposed to the proposed change to Section 12.1.

RECOMMENDATIONS

Staff recommends approval of the proposed First Amendment to the Power Purchase Agreement between Idaho Power and Telocaset Wind Power Partners, LLC, without change or condition.

Respectfully submitted this 19th day of May 2015.


Daphne Huang
Deputy Attorney General

Technical Staff: Rick Sterling

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CERTIFICATE OF SERVICE

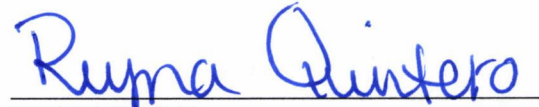
I HEREBY CERTIFY THAT I HAVE THIS 19TH DAY OF MAY 2015, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. IPC-E-15-09, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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